IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.3007 OF 2005
IN
SUIT NO.2225 OF 1994

Bharat Moulding Works ..Plaintiffs

Vs.

India Tin Industries P.Ltd. ..Defendants

Mr.R.S.Tripathi for the plaintiffs

Mr.Chetan Kapadia a/w Mr.Mihir Mody i/b K.Ashar and Co. for the defendants

CORAM : S.U.KAMDAR, J
DATED : 13TH OCTOBER, 2005

P.C.:

1. By consent of the parties, motion is taken up on board and called out for hearing and finally disposed of.

2. The present motion is taken out for setting aside an ex-parte decree. The ground given is default of the advocate for the defendants. I am of the opinion that there is some negligence on the part of the defendant in not tendering the written

statement in time. In the interest of justice defendants should be given an opportunity to defend the suit. However, the same can be only on terms. The learned counsel for the defendants states that he is willing to abide by the terms. Accordingly, I pass the following order:

3. Defendants to deposit in court a sum of Rs.5.0 lacs within 8 weeks from today. Prothonotary and Senior Master, High Court, Mumbai to deposit the said amount in Fixed Deposit of any Nationalised bank for a period of one year and renew the same from time to time till further orders. Defendants to pay cost quantified at Rs.25,000/- as condition precedent within a period of 7 dys from today. Written statement to be filed within 2 weeks from today. No inspection will be granted for filing of written statement. In an event if written statement is filed and aforesaid conditions are complied with, the motion be made absolute in terms of prayer clause (a). In an event if aforesaid conditions are not complied with, motion to stand dismissed. In an event if aforesaid terms are complied with, the learned

counsel for the defendants to file written statement within 2 weeks from the date of deposit and on paying cost. On such written statement being filed inspection and discovery to be carried out within 4 weeks.

4. By consent of the parties, Mr.Munshi Advocate is appointed as Commissioner for recording evidence. Commissioner will commence the recording of evidence on or before 1.1.06 and complete the same on or before 31.3.06. Commissioner is empowered to close the evidence of such witness if he does not appear inspite of two adjournments. Commissioner to file report of the recording of evidence on or before 31.3.06 before this court. Matter to be finally heard and disposed of as soon as the report is filed.